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March 22, 2002

NOTICE OF EX PARTE COMMUNICATION

William F. Caton, Acting Secretary
Federal Communications Commission
445 – 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: Paging Coalition Petition for Declaratory Ruling
CC Docket No. 01-346

Dear Mr. Caton:

This letter summarizes and supplements the *ex parte* conversation between the undersigned and Robert Tanner of the Common Carrier Bureau concerning the *ex parte* letter filed by Verizon in this proceeding under date of March 14, 2002. In that letter, Verizon states that its decision not to terminate Type 3A and similar interconnection arrangements, notwithstanding its previous announcement, "moots the petition". The Coalition emphatically disagrees.

Verizon's letter does not alter its legal position in this proceeding that Type 3A and similar arrangements are not within the Commission's jurisdiction over "interconnection" under Sections 201 and 251 of the Communications Act. Verizon therefore continues to maintain that Type 3A and similar arrangements are simply a "billing service" which is "generally unregulated" (Verizon Opposition at p. 7), and that pursuant to *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (FCC 2000)(subsequent history omitted), Verizon and other ILECs "'are not obligated . . . to provide such services at all'". (Verizon Opposition at p. 1). Therefore, under Verizon's view of the law, it remains entirely free to terminate Type 3A and similar arrangements at any time it chooses in its discretion to do so.

By contrast, the Coalition argues in its petition and reply to comments, *inter alia,* that such arrangements fall squarely within the Commission's jurisdiction over "interconnection" under Sections 332, 201 and 251 of the Communications Act; and that Verizon and other ILECs are obligated to continue providing them by reason of Sections 20.11 and 51.315(b) of the Commission's rules. To the extent the Commission determines for some reason that Sections 20.11 and 51.315(b) do not directly obligate Verizon and other ILECs to continue providing such arrangements, the Coalition further requests the Commission to find and declare that termination of such

arrangements nonetheless would be "unjust" and "unreasonable" under both Sections 201 and 251 of the Act and, therefore, unlawful. The Coalition further pointed out in its reply that the *TSR* decision continues to be misconstrued and misapplied in arbitration proceedings under Section 252 of the Communications Act concerning Type 3A and similar arrangements.

In short, while the Coalition has no reason to doubt Verizon's good faith in making the statements in its *ex parte* letter, there still is very much a live, continuing and fundamental dispute between Verizon and the Coalition as to the legal foundation for Type 3A and similar arrangements and Verizon's legal obligation to provide them. Under the Commission's rules, a declaratory ruling may be issued to "terminat[e] a controversy" or to "remov[e] uncertainty". Despite Verizon's letter, there clearly remains substantial "controversy" and "uncertainty" over the legal rights of Coalition members to obtain such arrangements from Verizon and other ILECs. Therefore, the rulings sought by the petition are still appropriate and needed and should be issued.

Notwithstanding Verizon's *ex parte* letter, none of the members of the Coalition actually has been advised by Verizon of any change in its previous decision to terminate Type 3A and similar arrangements. At such time as a notification occurs, the Coalition intends to file a supplement to its petition pursuant to Section 1.65 of the rules formally reflecting such notification and discussing why it nonetheless has no material effect on the relief sought in the petition.

Should the Commission have any questions concerning this matter, kindly contact the undersigned directly.

Very truly yours,

s/ Kenneth E. Hardman
Kenneth E. Hardman

Attorney for the Paging Coalition

cc: Robert Tanner, Esq.
Jared M. Carlson, Esq.